



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 28, 2003

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Representative Markey:

I am writing on behalf of the Nuclear Regulatory Commission (NRC) in response to your letter of January 8, 2003, concerning the proposed export of approximately 13 tons of depleted uranium to Japan for use at the Rokkasho Reprocessing Plant (application number XSOU8790). I will forward the Commission's decision on the export license application once that decision is made.

The questions raised in your letter relate to the current policies of the U.S. Government with respect to cooperation with other Governments in areas of potential nuclear proliferation concern. As a result, we have consulted with the Executive Branch. On January 22, 2003, we received a letter from the State Department (Enclosure 1), which responds directly to the questions you have raised and also responds to related questions submitted by NRC staff on December 24, 2002 (Enclosure 2). Earlier, on December 16, 2002, the Executive Branch had provided NRC with its formal views supporting approval of the license application (Enclosure 3).

The staff will now complete its review and analysis of this export request, taking into full consideration the views of the Executive Branch and the views expressed in your letter and by other interested parties. The staff's analysis and recommendation will then be considered by the Commission, which will make a final decision on the case, probably within the next several weeks. At that time, we will promptly advise you of this decision and provide you a copy of the related Commission paper, which documents the staff's analysis and recommendations.

I welcome your interest in this proposed export. Please let me know if I can be of further assistance.

Sincerely,

Richard A. Meserve

Enclosures:

1. Letter from the State Department to NRC, dated Jan. 22, 2003
2. Letter from NRC to the State Department, dated Dec. 24, 2002
3. Letter from the State Department to NRC, dated Dec. 16, 2002



United States Department of State

Washington, D.C. 20520

January 22, 2003

Ms. Janice Dunn Lee
Director, International Programs
United States Nuclear Regulatory Commission
Rockville, Maryland

Dear Ms. Lee:

I refer to my letter of December 16, and your letter of December 24, 2002 regarding NRC license application XSOU8790 for the proposed export to Japan of 25,983 kilograms of depleted uranium for test operation of the Rokkasho Nuclear Fuel Reprocessing Plant. Your letter requested Executive Branch responses to several questions regarding the U.S. Government approval of reprocessing U.S. origin spent fuel at Rokkasho and arrangements for the application of safeguards at the facility. I also refer to the letter dated January 8, 2003 from Congressman Markey to Chairman Meserve raising various concerns and questions about the export. Executive Branch responses to these questions are provided below:

NRC Questions

1. Q. "Explain why changed circumstances in recent years, including such factors as reduced economic justification, terrorist concerns and the various causes for the delays in Japan's plans to utilize separated plutonium, do not warrant revising the original U.S. government decision and related conditions that authorized reprocessing of U.S.-obligated spent fuel at Rokkasho."

A. As stated in my letter of December 16, the U.S. Government approval of reprocessing of U.S.-obligated spent fuel at Rokkasho for recovery of plutonium for civil power reactor use is not subject to suspension except "in the most extreme circumstances of exceptional concern from a non-proliferation or national security point of view." Extreme circumstances are understood to be actions on the part of Japan such as a material breach of or withdrawal from relevant treaties or agreements such as the NPT, Japan's safeguards agreement with the IAEA, or the Agreement for Cooperation. The "changed circumstances" cited in the NRC's question do not constitute legal grounds under the U.S./Japan Agreement for Peaceful Nuclear Cooperation for reconsideration or suspension of the U.S. approval. With respect to physical protection, shipments of depleted uranium are subject to the provisions of INFCIRC/225 Category III, as has been the case for the many shipments of low enriched uranium power reactor fuel which have been made to Japan over the years, including shipments undertaken since the events of 9/11.

2. Q. "The President's December 2002 policy statement of the National Strategy to Combat Weapons of Mass Destruction reaffirms that the U.S. "will continue to discourage the worldwide accumulation of separated plutonium...". In view of this policy decision, and the reduced need for separated plutonium in Japan within the timeframes originally contemplated, does the Executive Branch anticipate reaching any formal understandings with Japan on the production levels planned for Rokkasho in advance of the decision to authorize the plant to begin operation?"

A. As part of its commitment to policies laid out in the "Guidelines for the Management of Plutonium", Japan has committed itself to the "management of plutonium in ways which are consistent with its national decisions on the nuclear fuel cycle and which will ensure the peaceful use or the safe and permanent disposal of plutonium." Among the factors to be taken into account in the formulation of its national strategy is the importance of balancing supply and demand, including demand for reasonable working stocks for nuclear operations. Japan's plutonium utilization plan adopts the principle of no surplus plutonium and has adopted the policy of publishing its projected supply and demand for plutonium in order to demonstrate that it follows this principle. The United States welcomes these commitments, but believes that it is up to Japan to determine how it implements them.

Nothing in the US-Japan Agreement for Peaceful Nuclear Cooperation provides a basis for U.S. involvement in determining production levels at Rokkasho. Moreover, the question could be read to suggest that the United States is or will be confronted by a decision on whether to "authorize the plant to begin operation." Pursuant to Article 1.1(a)(i) of the US-Japan Implementing Agreement, the United States has *already* authorized reprocessing at Rokkasho, provided only that Japan add the facility to Annex 1 of the Implementing Agreement. Japan may do this by a notification procedure that involves provision of certain safeguards and physical protection information to the United States. The Agreement does not provide the United States with a right to approve the addition of Japanese facilities to Annex 1.

3. Q. "What is the anticipated time frame for consultations between the U.S. and Japan on the safeguards approach for Rokkasho?"

A. Informal consultations have been ongoing on a regular basis since before the start of construction of the facility. During the past year these consultations have intensified, involving as well meetings with the IAEA. The next meeting with Japan will take place early in 2003 at the Rokkasho site. These informal consultations take place in parallel with Japan's negotiation with the IAEA of a Facility Attachment for Rokkasho, which will be completed before irradiated nuclear fuel is introduced into the facility.

4. Q. "When does the Executive Branch anticipate that Rokkasho will be added to the list of facilities in Annex 1 of the U.S./Japan Nuclear Cooperation Agreement?"

A. While we have had informal discussions with Japanese officials on this subject, we are not currently able to specify the date at which Japan will give the United States the requisite notification. The Rokkasho facility must of course be added to Annex 1 before any reprocessing of U.S.-obligated nuclear material takes place there.

5. Q. "Since the safeguards approach being developed for the fully operating Rokkasho facility has not yet been reviewed and approved by the U.S. Government, what interim arrangements have been made to ensure that the source material (depleted uranium) proposed for export to Rokkasho by TLI will be subject to appropriate IAEA safeguards measures?"

A. As stated in my letter of December 16, with regard to safeguards, the U.S.-Japan Agreement for Cooperation requires Japan to provide the U.S. prior to startup of Rokkasho information on the safeguards approach agreed with the IAEA. The fact that the proposed export and its utilization at the Rokkasho facility will be fully subject to all the terms and conditions of the U.S. -Japan Agreement for Cooperation, and the fact that Japan is a non-nuclear weapon state Party to the NPT with the requisite IAEA full-scope safeguards agreement, ensure that IAEA safeguards will be applied to the exported depleted uranium and the facility where it will be utilized. While the facility attachment for the reprocessing plant is not yet in effect, IAEA safeguards will be applied to the depleted uranium under ad hoc arrangements agreed between Japan and IAEA. The great majority of the safeguards equipment for monitoring the solutions and solids in the facility has already been installed, and is now being tested.

With respect to the longer term, the safeguards approach for regular operation of the Rokkasho plant has been developed cooperatively between Japan, the U.S. and the IAEA, and has been under U.S. technical review since August of 2001 when a team of U.S. experts toured the facility. Here again, however, the wording of the question could be read to suggest a U.S. Government right of approval of the safeguards approach. Although the US-Japan Implementing Agreement requires Japan to affirm that the safeguards arrangement is in accordance with a "safeguards concept" previously agreed by the United States and Japan, it does *not* provide the United States with a right to "approve" the safeguards arrangement.

Congressman Markey's Questions

1. Q. "What is the timeframe for the decision to issue or deny the application?"

A. The Executive Branch defers to the NRC regarding discussion of the timeframe for a decision on the application.

2. Q. "What studies have been or will be done regarding the safety and security needs of such a shipment as required by Annex B of the 1998 US-Japan Agreement? What safeguards will be imposed to protect against theft or diversion of nuclear material from this facility?"

A. Given that this export involves source material (depleted uranium), no additional studies of safety or security were deemed necessary. Pursuant to the US-Japan Agreement, there have been hundreds of shipments from the United States to Japan of low enriched uranium power reactor fuel that have been made without incident. With regard to the question about safeguards, see the answer to NRC question 5 above.

3. Q. "Please provide documentation demonstrating that the uranium is, indeed, of solely U.S. origin, and please explain why Box 24 ("Countries Which Attach Safeguards") on the license application was left blank."

A. The Executive Branch finds no reason to question USEC's information as provided in the application that the depleted uranium proposed for export is entirely of U.S.-origin. Assuming that is the case, there are no "other" countries which attach safeguards to this material. In any case, no countries that attach obligations on their nuclear material exports to the United States pursuant to Agreements for Cooperation require safeguards conditions more stringent than required by U.S. law, regulation and policy for approval of nuclear exports. The safeguards arrangements currently in place for Rokkasho, which will apply to the proposed export, fully meet U.S. statutory, regulatory and policy requirements for approval and would meet any other supplier country safeguards requirements, if any of the material proposed for export were subject to third country obligations.

4. Q " What studies have been or will be done regarding the nonproliferation implications of such a shipment? Please provide copies. If no such studies will be done, why not?"

A. No special studies have been done regarding the "nonproliferation implications" of the proposed export because the transfer is entirely in accordance with: 1) the U.S. Government approval of reprocessing of U.S. obligated spent fuel at Rokkasho for recovery of plutonium for civil power reactor use; 2) the safeguards arrangements for Rokkasho already in place and under development; 3) the terms and conditions of the US-Japan Agreement for Peaceful Nuclear Cooperation; and 4) the benign nature of a shipment of depleted uranium. With regard to nuclear cooperation with Japan pursuant to the US-Japan Agreement, a Nuclear Proliferation Assessment Statement covering the Agreement was done by ACDA prior to the Agreement being submitted to Congress.

5. Q. "Has the NRC requested or received any comments on the application from the Executive Branch regarding nonproliferation impacts or consequences? If so, please provide copies. If not, why not?"

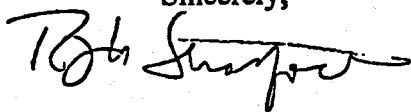
A. This letter and the Executive Branch's letter of December 16, 2002 are a matter of public record and may be provided by the NRC to any requester.

6. Q. "If and when the NRC takes action on the application, I request that I be promptly provided with a copy of any letter, statement or other document setting forth the rationale for the Commission's decision in this matter."

A. This appears to be a request for the NRC directly.

I hope the foregoing will be helpful to the Commission in its review of the subject application.

Sincerely,



Richard J. K. Stratford
Acting Deputy Assistant Secretary
for
Nuclear Nonproliferation



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

ENCLOSURE 2

December 24, 2002

Mr. Richard J.K. Stratford, Director
Nuclear Energy Affairs
U.S. Department of State
2201 C Street, N.W.
NP/NE, Room 3320
Washington, D.C. 20520

Dear Mr. Stratford:

Thank you for your letter of December 16, 2002, concerning NRC Export License Application XSOU8790, the proposed export of 25,983 kilograms of depleted uranium for test operation of the Rokkasho Nuclear Fuel Reprocessing Plant in Japan.

We take note of your recommendation that the requested export license be issued. However, to assist the Commission's final review of this application, I would appreciate the Executive Branch's response to the questions posed in the attachment to this letter. Answers to these questions will enable the Commission to address, more authoritatively, substantive issues concerning this case that are relevant to the applicable criteria of the Atomic Energy Act of 1954, as amended, in particular the requirement to make a judgment that the proposed export would not be inimical to the common defense and security of the United States.

There have been significant nuclear proliferation and nuclear security related developments since the Executive Branch and the Commission last reviewed and approved an export license for the Rokkasho Plant. Accordingly, the Commission would benefit from the Executive Branch's updated views on these developments and confirmation that they have not resulted in changed circumstances that would warrant any reconsideration of the Executive Branch's previous decision in favor of allowing the reprocessing of U.S.-obligated spent fuel at Rokkasho.

Thank you for your assistance in this matter.

Sincerely

A handwritten signature in black ink, appearing to read "Janice Dunn Lee", is written over a circular embossed seal. The signature is fluid and cursive.

Janice Dunn Lee, Director
Office of International Programs

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**Proposed Export of Source Material to Rokkasho Reprocessing Plant
NRC Export License Application XSOU8790
Questions for the Executive Branch**

Background. Transport Logistics International, Inc., is proposing to export approximately 25.9 metric tons of depleted uranium to Japan for cold test operations in the Rokkasho Reprocessing Plant. Before approving this export, the Executive Branch and NRC must make a judgment that the export will not be inimical to the common defense and security of the United States. The answers to the questions posed below to the Executive Branch are relevant to making this judgment.

1. Explain why changed circumstances in recent years, including such factors as reduced economic justification, terrorist concerns and the various causes for the delays in Japan's plans to utilize separated plutonium, do not warrant revising the original U.S. Government decision and related conditions that authorized reprocessing of U.S.-obligated spent fuel at Rokkasho.
2. The President's December 2002 policy statement on the National Strategy to Combat Weapons of Mass Destruction reaffirms that the U.S. "will continue to discourage the worldwide accumulation of separated plutonium....." In view of this policy decision, and the reduced need for separated plutonium in Japan within the timeframes originally contemplated, does the Executive Branch anticipate reaching any formal understandings with Japan on the production levels planned for Rokkasho in advance of the decision to authorize the plant to begin operation?
3. What is the anticipated time frame for consultations between the U.S. and Japan on the safeguards approach for Rokkasho?
4. When does the Executive Branch anticipate that Rokkasho will be added to the list of facilities in Annex 1 of the U.S./Japan Nuclear Cooperation Agreement?
5. Since the safeguards approach being developed for the fully operating Rokkasho facility has not yet been reviewed and approved by the U.S. Government, what interim arrangements have been made to ensure that the source material (depleted uranium) proposed for export to Rokkasho by TLI will be subject to appropriate IAEA safeguards measures?



United States Department of State

Washington, D.C. 20520

December 16, 2002

Ms. Janice Dunn Lee
Director, International Programs
United States Nuclear Regulatory Commission
Rockville, Maryland

Dear Ms. Lee:

I refer to the letter from your office dated October 21, 2002, requesting the views of the Executive Branch as to whether issuance of an export license in accordance with the application hereinafter described meets the applicable criteria of the Atomic Energy Act of 1954, as amended:

NRC No. XSOU8790 -- Application by Transport Logistics International, Inc. for authorization to export to Japan 25,983 kilograms of depleted uranium for test operation of the Rokkasho Nuclear Fuel Reprocessing Plant being completed in Rokkasho-Mura, Aomori.

It is the judgment of the Executive Branch that the proposed export would not be inimical to the common defense and security of the United States, and is consistent with the provisions of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978.

The proposed export to Japan would take place pursuant to the Agreement for Cooperation Between the United States and Japan, as confirmed by the Government of Japan in a Diplomatic Note reported in the enclosed telegram from U.S. Embassy Tokyo.

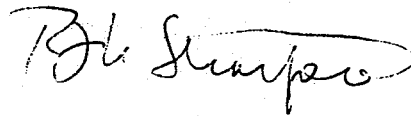
The Department of State has taken note of the interventions by Greenpeace and Green Action urging denial of the proposed export on the basis of concerns about the adequacy of safeguards at the Rokkasho facility and Japan's utilization of plutonium. The U.S. Government has approved reprocessing of U.S.-obligated spent fuel at Rokkasho for recovery of plutonium for civil power reactor use. The U.S. approval is not subject to suspension

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except "in the most extreme circumstances of exceptional concern from a non-proliferation or national security point of view," such as a material breach of or withdrawal from the NPT, Japan's safeguards agreement with the IAEA, or the Agreement for Cooperation. No such action has been alleged or is even remotely conceivable. With regard to safeguards, in order to satisfy the requirements of the U.S.-Japan Agreement for Cooperation, Japan is required to provide the U.S., prior to startup of Rokkasho, information regarding the safeguards approach agreed with the IAEA. The fact that the proposed export and its utilization at the Rokkasho facility are fully subject to all the terms and conditions of the U.S. -Japan Agreement for Cooperation, assures that IAEA safeguards will be applied to the export and the facility in full compliance with Japan's full-scope safeguards agreement with the IAEA.

On the basis of the foregoing, the Executive Branch recommends issuance of the requested license.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. J. K. Stratford", written in a cursive style.

Richard J. K. Stratford
Director
Nuclear Energy Affairs

Enclosure: Tokyo telegram.